

**CC Docket No. 96-149**  
**The Citizens Utilities Companies**  
**Initial Comments, 8/29/96 (as extended)**

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FEDERAL COMMUNICATIONS COMMISSION  
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14. Number of Copies made  
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## **TABLE OF CONTENTS**

**The comments are directed at Section VIII (D) of the *NPRM* dealing with the “classification of independent LECs or their affiliates.”**

Summary of Comments	-ii-
I. Introduction	-1-
A. The Citizens Companies	-1-
B. The Interest of the Citizens Companies in this Proceeding	-2-
II. The <u>Competitive Carrier Fifth Report and Order</u> ’s Treatment of the Independent LEC-Affiliated IXC Relationship Is Predicated Upon an Industry State That No Longer Exists	-3-
III. The Citizens Companies Lack Market Power in “In-Region” Interexchange Operations And Are Non-Dominant in That Line of Business	-7-
A. The Operative Definition of “Market Power”	-7-
B. The Market Position of the Citizens Companies in “In-Region” IXC <u>Services</u>	-8-
C. Independent LECs Are in No Position to Leverage Residual Bottleneck Control of Exchange Access Facilities to the Advantage of Their IXC Services	-10-
Conclusion	-11-

### **SUMMARY OF COMMENTS**

Independent LEC “in-region” IXC services lack market power in that IXC market and, accordingly should be classified as nondominant without continued resort to the policies and principles of the Competitive Carrier Fifth Report and Order. Given this lack of market power, Independent LECs, like competitive entrants, should be able to compete in the emerging “integrated” services market without the artificial fetters of the Competitive Carrier Fifth Report and Order. The necessary safeguards for detection and disposition of any theoretical abuse of residual local exchange/exchange access bottleneck power by Independent LEC providing IXC services exist independently of the Competitive Carrier Fifth Report and Order’s strictures. These safeguards include statutory and regulatory non-discrimination requirements and prohibitions against subsidization of competitive services with revenues from non-competitive services. Accordingly, no need exists for continuation of the Competitive Carrier Fifth Report and Order’s regulatory constraints upon Independent LEC IXC operations from their service areas, and no justification exists for imposing new or different structural separation requirements upon such activities.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting	)	CC Docket No. 96-149
Safeguards of Sections 271 and 272 of the	)	
Communications Act of 1934, as amended;	)	
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of	)	
Interexchange Services Originating in the	)	
LEC's Local Exchange Area	)	

**COMMENTS OF THE CITIZENS UTILITIES COMPANIES**

Citizens Utilities Company, on behalf of itself and its telecommunications divisions and subsidiaries (hereinafter referred to, collectively, as the "Citizens Companies"), by its attorney, hereby submits its comments on the above-styled Notice of Proposed Rulemaking released July 18, 1996, initiating this proceeding (the "*NPRM*"), and shows as follows:

I. Introduction

A. The Citizens Companies

Citizens Utilities Company, through divisions and subsidiaries, provides telecommunications services, electric distribution, natural gas transmission and distribution and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. The Citizens Companies' incumbent local exchange carriers (the "Citizens LECs") provide local exchange telephone services in suburban and rural exchange areas serving approximately 850,000 access lines in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania,

Tennessee, Utah, and West Virginia. In addition, Citizens Telecommunications Company, a Citizens subsidiary, provides interexchange services throughout the nation including, as specifically relevant to this proceeding, interexchange services on traffic originating in the states where the Citizens LECs operate. Finally, another Citizens subsidiary, Electric Lightwave, Inc., provides competitive local exchange and interexchange services in several Far Western states.

B. The Interest of the Citizens Companies in this Proceeding

The Citizens Companies support a procompetitive policy of opening local exchange markets, including those in which it provides local exchange services, to usher in robust competition. This policy is driven by the Citizens Companies' evolution from the dated industry division into local exchange and interexchange categories. The Citizens Companies' are focused upon meeting burgeoning consumer demand for comprehensive, sophisticated telecommunications services at market-based prices. Eschewing the monopoly era thinking that "pigeon-holed" carriers into rigid local exchange and interexchange carrier classifications, the Citizens Companies are quickly moving to become integrated platform providers of a complete and changing array of telecommunications products. In the view of the Citizens Companies, achievement of this paradigm is fundamental in meeting customer demand in the new era heralded by the recent enactment of the Telecommunications Act of 1996. The market will no longer tolerate the old-fashioned regulatory paradigm that effectively forced customers to deal with multiple service providers to meet their total telecommunications needs.

The scope of the comments of the Citizens Companies in this proceeding is limited to a single area -- regulatory treatment of independent local exchange carrier ("Independent LEC") provision

of interexchange services ("IXC") on traffic originating in Independent LEC local exchange areas. As shown below, Independent LEC "in-region" IXC services lack market power in that IXC market and, accordingly should be classified as nondominant. Given this lack of market power, Independent LECs, like competitive entrants, should be able to compete in the emerging "integrated" services market without the artificial fetters of the Competitive Carrier Fifth Report and Order. The necessary safeguards for detection and disposition of any theoretical abuse of residual local exchange/exchange access bottleneck power by Independent LEC providing IXC services exist independently of the Competitive Carrier Fifth Report and Order's strictures. These safeguards include statutory and regulatory non-discrimination requirements<sup>1/</sup> and prohibitions against subsidization of competitive services with revenues from non-competitive services.<sup>2/</sup> Accordingly, no need exists for continuation of the Competitive Carrier Fifth Report and Order's regulatory constraints upon Independent LEC IXC operations from their service areas,<sup>3/</sup> and no justification exists for imposing new or different structural separation requirements upon such activities.

II. The Competitive Carrier Fifth Report and Order's Treatment of the Independent LEC-Affiliated IXC Relationship Is Predicated Upon an Industry State That No Longer Exists

The 1996 telecommunications industry milieu is far different than that of the mid-1980s when

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<sup>1/</sup> See Section 202(a) of the Communications Act of 1934, as amended, 47 U.S.C. §202(a) (the "Act").

<sup>2/</sup> See Section 254(k) of the Act and Parts 32 and 64, Subpart I, and Sections 43.21 and .22 of the Commission's Rules.

<sup>3/</sup> See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefore, CC Docket No. 79-252, Fifth Report and Order, 98 FCC 2d 1191 (1984) (Competitive Carrier Fifth Report and Order).

the Competitive Carrier Fifth Report and Order was issued. That decision came in the wake of the AT&T divestiture, at a point in time when interexchange equal access and promulgation of the exchange access charge system were revolutionary. As part of that revolution, the Bell Operating Companies were divorced from a major segment of the long distance industry and GTE's local exchange operations were subjected to strict structural separation from its affiliated interexchange service provider. Taken in the context of the mid-1980's telecommunications revolution, the Competitive Carrier Fifth Report and Order's treatment of Independent LEC/IXC-affiliations can be viewed as a natural, if somewhat diminished, extension of that era's overarching concern with the incentive and ability of monopoly access providers to potentially discriminate and engage in cost-shifting to favor affiliated IXCs.

Subsequent to issuance of Competitive Carrier Fifth Report and Order, the Commission adopted rules that, *inter alia*, offer strong safeguards, particularly in the area of cost-shifting, against Independent LEC bottleneck abuses in "in-region" IXC operations. These post-1984 (the year of issuance of the Competitive Carrier Fifth Report and Order) safeguards include the following:

<u>FCC Rule Number</u>	<u>Date of Effectiveness</u>
§32.23 -- LEC non-regulated activities	1/1/88
§32.27 -- LEC transactions with affiliates	1/1/88
§64.901 -- Cost allocation rule	4/3/87
§64.902 -- Affiliate transactions	1/1/88
§64.903 -- Cost Allocation Manuals <sup>4/</sup>	1/1/92

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<sup>4/</sup> While only incumbent LECs with annual operating revenues over a certain size are  
(continued...)

\$64.904 -- ARMIS Audits

1/1/92

The Citizens Companies believe that these post-1984 safeguards, coupled with the long-standing Commission LEC tariff processing and complaint procedures, have rendered moot whatever value the Competitive Carrier Fifth Report and Order had in policing Independent LEC "in-region" IXC abuses. Regardless of whether Independent LEC "in-region" IXC services are classified as dominant or nondominant, this panoply of post-Competitive Carrier Fifth Report and Order regulatory tools present an ample arsenal to deal with any case of Independent LEC bottleneck abuse.

February 8, 1996, the date that the Telecommunications Act of 1996 became law, will be marked in history as the beginning of a new revolution in the telecommunications industry. In particular, the ability of competitors to avoid LEC access charges, either through use of their own facilities, LEC unbundled network elements acquired at cost, or any combination of the two, should undermine any residual LEC bottleneck power.<sup>5/</sup> Such competitors will be unhindered by any structural separation or cost allocation requirements or any prohibition against joint ownership of infrastructure. Accordingly, in the course of this local exchange revolution, Independent LECs could actually be severely disadvantaged in their ability to compete in the integrated services market if still burdened with the present or embellished Competitive Carrier Fifth Report and Order requirements.

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<sup>4/</sup>(...continued)

required to file Cost Allocation Manuals, all incumbent LECs are required to follow the §§ 32.23 and .27 and §§64.901 and .902 requirements. Further, the Commission may order any carrier, regardless of size, to file a Cost Allocation Manual and undergo ARMIS audits. See §§64.903(c) and .904(a).

<sup>5/</sup> It should also be noted that Independent LECs are required, pursuant to Section 251(b)(3) of the Act, to provide "dialing parity" to competitors. Dialing parity includes intraLATA equal access. See Section 3(39) of the Act.



No credible rationale exists for burdening Independent LECs with antiquated structural separation and related requirements in the new telecommunications milieu where customers will demand and competitors will be able to provide, without artificial hindrance, "one-stop" integrated, local exchange, interexchange and other telecommunications and information services.

The new era heralded by the Telecommunications Act of 1996, not only enables, but encourages, all carriers to take advantage of economies of scope associated with provision of communications services in multiple product and geographic markets. In sharp contrast, the Competitive Carrier Fifth Report and Order stands as an unnecessary obstacle to Independent LEC achievement of a presence, much less efficiency, in the integrated services market. The existing constraints on Independent LEC provision of "in-region" IXC services are inappropriate in the new telecommunications environment. In fact, these constraints will serve to disadvantage Independent LECs vis-a-vis their competitors if they are not removed. Specifically, the Competitive Carrier Fifth Report and Order does not permit Independent LECs and their IXC affiliates to own jointly switching and transmission facilities. This constraint inhibits Independent LECs' ability to achieve economies of scope in the joint provision of integrated local, long distance and other services. Similarly, the present structural separation requirement imposes significant costs and inefficiencies upon Independent LECs entering the IXC business, without any countervailing public benefit. New entrants, however, will not be subject to these constraints and have the unimpeded opportunity to achieve such economies of scope.

As demonstrated in the next section of these comments, the Citizens Companies, which can be considered to be reasonably representative of "mid-sized" telecommunications enterprises, have

no market power in the “in-region” IXC business and are properly classified as nondominant without resort to continuation of the Competitive Carrier Fifth Report and Order requirements. In point of fact, those companies have less brand recognition “in-region” than do the “big three” IXCs or the Bells operating in contiguous territories. Continued imposition of Competitive Carrier Fifth Report and Order requirements upon the Citizens LEC/affiliated IXC “in-territory” relationship is not only unnecessary to prevent abusive conduct, but adds one more burden to those companies’ ability to join the vanguard of the new telecommunications revolution.

III. The Citizens Companies Lack Market Power in “In-Region” Interexchange Operations And Are Non-Dominant in That Line of Business

A. The Operative Definition of “Market Power”

As stated in the *NPRM*,

In determining whether a firm possesses market power, the Commission previously has focused on well-established market features, including market share, supply and demand substitutability, the cost structure, size, or resources of the firm, and control of bottleneck facilities. All but one of these features, bottleneck control, appear to focus exclusively on whether the carrier has the ability to raise prices by restricting its own output.<sup>6/</sup>

The Citizens Companies believe it is obvious that there is ready supply substitutability in the interexchange services market.<sup>7/</sup> The IXC market is now fundamentally a commodity market. Further, Independent LECs (with the exception of GTE and Sprint) lack the size, cost structure or resources approaching that of any of the “big three” IXCs, those IXCs collectively, the IXC industry as a whole, or any of the Bells as potential IXCs. Accordingly, the essential analytical criteria to be

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<sup>6/</sup> *NPRM* at ¶133 [footnotes omitted].

<sup>7/</sup> *Id.*

focused on in determining whether Independent LECs have market power in “in-region” IXC operations are market share and whether they have the ability to leverage bottleneck facilities. Using these applicable criteria leads to only a single possible conclusion -- Independent LECs lack market power and are nondominant in the “in-region” IXC market.

B. The Market Position of the Citizens Companies in “In-Region” IXC  
Services

Citizens Telecommunications Company, an interexchange carrier subsidiary of Citizens Utilities Company, provides interexchange services to approximately 14% of the Citizens LECs’ 850,000 local exchange access lines. This business is extremely important to the Citizens Companies, but does not represent significant market penetration. What it does reflect is that Independent LEC status does not, in and of itself, guarantee a large market share in the fully competitive IXC business. Recent surveys conducted by the Citizens Companies suggest why this is so.

During the second quarter of 1996, the Citizens Companies commissioned a “baseline” customer loyalty and brand image survey by the firm of Cambridge Reports/Research International of Cambridge, Massachusetts (“Cambridge”), to be followed by quarterly tracking surveys. The initial Cambridge survey involved interviews of 1,400 Citizens LEC residential customers between April 2-14, 1996, and interviews of 1,400 Citizens LEC business customers between April 5-26, 1996.

The initial Cambridge survey showed that Citizens LEC residential and business customers recognize the following carrier names and express loyalty to those carriers in the following

proportions:

<u>Carrier Name</u>	<u>Percentage of Customers Expressing Brand Awareness</u>	
AT&T	Residential	86%
	Business	87%
MCI	Residential	71%
	Business	69%
Sprint	Residential	60%
	Business	65%
Citizens	Residential	50%
	Business	56%
Other	Residential	17%
	Business	18%

The lack of brand awareness of and loyalty toward the Citizens Companies, particularly in relationship to the “big-three” IXC’s, shown in the initial Cambridge survey is due, in some measure, to the fact that most of the Citizen LEC properties have been acquired since 1993. However, a far more significant factor in the view of the Citizens Companies is the fact that the “big three” IXC’s (and, for that matter, the Bells that are contiguous to the Citizens LEC’s) are able to blanket local media, particularly television, with constant advertisements and have done so for many more years than the Citizens Companies have been present in most of the affected markets. In contrast, the Citizens Companies are not able at this time to use, in a cost-effective fashion, television advertising because it cannot be limited in transmission to the relatively small “in-region” markets served by the Citizens LEC’s.

By any reasonable definition, the Citizens Companies lack significant market share in “in-

region" IXC services. Further, the Cambridge study illustrates the Citizens Companies' low brand recognition and loyalty among "in-region" customers. Given the fact that the IXC market features a ready substitutability of service that makes the market tantamount to a commodities market, the Citizens Companies, with their low IXC market share and brand recognition, are hardly in a position to raise prices for "in-region" IXC services by restricting output. The Citizens Companies believe that they are typical of other Independent LECs of similar or smaller size in this regard.

C. Independent LECs Are in No Position to Leverage Residual Bottleneck Control of Exchange Access Facilities to the Advantage of Their IXC Services

In Section II, above, the Citizens Companies demonstrated that ample tools have been crafted by the Commission since the 1984 issuance of the Competitive Carrier Fifth Report and Order to police effectively any Independent LEC bottleneck abuse that advantages affiliated IXC operations. The many large, well-heeled "in-region" competitors to an Independent LEC's IXC services can be counted on invoke these tools at the slightest suggestion that abuse is or might be occurring. More to the point, the fact that non-affiliated IXCs are often the largest customers of an Independent LEC, usually dwarfing in revenue the LEC's own IXC revenues, creates a natural disincentive to untoward LEC conduct. This will be an even greater enforcement element as non-affiliated IXCs are able to find alternative access sources as a result of new interconnection rights and opportunities.

The reality, even in Independent LEC markets, is that bottleneck control of exchange access facilities will end. Accordingly, any specific regulatory requirements that are imposed upon the Independent LEC/affiliated IXC relationship should be the minimum necessary to ensure against cost shifting and discrimination. Those regulations are already in place in Parts 32, 43 and 64 of the

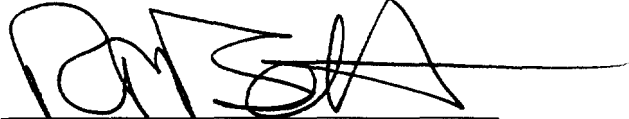
Commission's Rules.

Conclusion

The Independent LEC/affiliated IXC strictures of the Competitive Carrier Fifth Report and Order are, in their present form or as embellished, wholly unnecessary. Post-1984 Commission regulations dealing with cost allocation and affiliate transactions, coupled with pre-existing tariff review regulations and non-discrimination requirements, represent all the tools necessary to police Independent LEC/affiliated IXC relationships. Further, based upon the representative example presented by the Citizens Companies, Independent LECs do not possess market power in the "in-region" interexchange business. Even if such market power did exist, competitors taking advantage of new interconnection rights and opportunities will undermine it and, until it disappears, ample regulatory tools exist to detect and eliminate abuses.

Respectfully submitted,

CITIZENS UTILITIES COMPANY

A handwritten signature in black ink, appearing to read 'RMT', is written over a horizontal line.

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August 29, 1996